second defendants (Singapore company) not owned by the first (Wicker) or third defendant or the first defendant's nominees or alternatively that such shares are held as trustee for and on behalf of Trans Continental Commodity (S) Pte. Ltd. (a company incorporated in United Kingdom) in which the plaintiff is or is entitled to be treated as the beneficial shareholder of all the issued shares." (Here the name of the U.K. company should read Trans Continental Commodity Merchants Limited and not as set out in error above). I do not see how this alternative plea can be made unless the London company are co-plaintiffs in the Singapore Suit. Furthermore, in my view, Chase Nauru, the registered holders of the said 144,501 issued shares in the Singapore company should have been joined as defendants. No court, least of all a court of equity, will make an order affecting the interests or rights of third parties without their being present in court, *Maythorn* v. *Palmer*.[3] Yet again in my view the plaintiffs did not clear the hurdle set by Principle No. (1). Due to these defects in the action I was not satisfied that there was a serious question to be tried. To my mind "a serious question" can only arise if the proper, necessary and/or interested parties, in the first instance, are before the court. The plaintiffs must show some right or interest in the subject matter of the complaint. The equitable remedy of an injunction is only available "where there is an invasion of a legal or equitable right". *Day* v. *Brownrigg*[4] (per James L.J. at page 305). In the instant case the plaintiffs had no legal or equitable right to enforce against the Singapore company. There is therefore no way by which an injunction, interim or otherwise, could possibly have been granted.

Further, I was also of the view that in all the circumstances of this case "if the plaintiff succeeds he would be adequately compensated by damages for the loss sustained between the application and the trial, in which case no interlocutory injunction should be normally granted." (*Fellowes* v. *Fisher*).

I therefore dismissed the motion with costs.

Motion dismissed.

Solicitors: *Khattar, Wong & Partners; Murugason & Co.*

CHEW TAK v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) March 1, 1978]

[Singapore — Magistrate's Appeal No. 79 of 1977]

Criminal Law and Procedure — Charge of intentionally giving false evidence — Accused making different statements at preliminary inquiry and a subsequent statement to police officer — Statement at preliminary inquiry not correct — Accused should not have been charged in alternative — Sentence — Penal Code, s. 193.

Penal Code, s. 193 — False evidence — Charge of intentionally giving.

The appellant had been convicted on two charges of intentionally giving false evidence. On the first charge he was alleged to have made two statements, one at the preliminary inquiry and one to a police officer in the course of a subsequent police investigation, which statements were different from one another. The appellant at the trial did not dispute that the statement he made at the preliminary inquiry was not correct and he said he made it to protect a detective and his informant. He was charged in the alternative at the trial. On the second charge it was again alleged that the appellant made differing statements at the preliminary inquiry and subsequently to a police officer. The appellant appealed against his conviction and sentence.

Held: (1) on the statements available to the prosecution the proper course in regard to the first charge should have been to charge the appellant with intentionally giving false evidence at the Preliminary Inquiry instead of a charge in the alternative as framed. However, the error in the form of charge did not occasion a failure of justice;

(2) having regard to the reason for his giving the false evidence, the sentence of nine months imprisonment was manifestly excessive and the sentence should be reduced to a fine of $1,000;

(3) having regard to all the circumstances there was a reasonable doubt that the appellant had intentionally given false evidence, as charged in the second charge, and the conviction on that charge should be set aside.

MAGISTRATE'S APPEAL.

Datuk David Marshall (*Nathan Isaac* with him) for the appellant.

Fong Kwok Jen and *Gwee Hak Theng* (Deputy Public Prosecutors) for the respondent.

Wee Chong Jin C.J.: On January 13, 1976, as a result of information received from an informer, a taxi SH.2381 U was stopped by three police officers. The taxi was searched and heroin was found in the taxi. The taxi driver was arrested and charged. Subsequently a Preliminary Inquiry was held and the taxi-driver was committed for trial in the High Court on a charge of drug trafficking. The appellant, Chew Tak, was one of the three police officers who arrested the taxi-driver. In accordance with the usual procedure, the appellant gave a statement on January 16, 1976 to the Police Inspector conducting the police investigation into the case against the taxi-driver. Later, on April 1, 1976 the appellant made and signed a statement under section 139 of the Criminal Procedure Code for use at the Preliminary Inquiry. At the Preliminary Inquiry held on April 9, 1976 this signed statement was tendered and admitted in evidence.

Before the charge against the taxi-driver came up for trial in the High Court, as a result of a direction from the Public Prosecutor, the appellant and the other two police officers who took part in the arrest of the taxi-driver were required to and made statements to two Police Inspectors in relation to the

charge against the taxi-driver. The appellant's statement was made to Inspector Sukhdev Singh August 29, 1976.

Subsequently, the appellant was charged, tried and convicted on the following two charges: —

"1st charge

You, Chew Tak, are charged that you on or about the 9th day of April 1976 in the course of a Preliminary Inquiry held before the learned Magistrate of Court No. 14 Subordinate Courts, Havelock Road, Singapore with a view to committal for trial to the High Court of one Tan Sit Yang on a charge of trafficking in a controlled drug which is an offence under section 3(a) of the Misuse of Drugs Act 1973 (No. 5 of 1973) and punishable under section 29 of the said Act, did intentionally state in evidence:

'On January 13, 1976 at about 7.40 p.m. I received a phone call from Cheong Foo Thiong DPC 6758 of CID at my home at Block 33, No. 38-C Jalan Tiga. He requested me to meet him at Lorong 6 junction Geylang Road. I then left with Ang Beng Kuan PC 8286 who was then in my house'

and that you, on or about the 29th day of August 1976 at CID Robinson Road, in the course of a Police Inquiry into the same case before Insp. Sukhdev Singh, did intentionally state that:

'I then left to look for DPC 6758 at his sister's house at Blk. 11, Jalan Batu. I met DPC 6758 there and told him that PC 8286 had information that a taxi-driver would be trafficking in drugs at 7.00 p.m. along Lorong 6 Geylang on that day, I asked him whether he wanted to accompany us to arrest the taxi-driver, he agreed and we left the place together. I rode my own motorcycle whilst DPC 6758 used his. We went back to Block 4, Dakota Crescent and joined PC 8286 again in waiting for the telephone call. We waited for a few minutes and there was a telephone call which PC 8286 answered. I do not know what transpired between him and the party at the other end but I remember his asking for the taxi number. The conversation for less than two minutes after which he told us the taxi number as SH 2381 U, and said that the taxi would be coming in from the Mountbatten Road side to the Geylang Road side. He asked us to leave immediately as the taxi would go there anytime then. We then left Dakota Crescent on our motorcycles. I carried PC 8286 pillion whilst DPC 6758 rode his own motor cycle'

one of which statements you either knew or believed to be false, or did not believe to be true, and you have thereby committed an offence punishable under section 193 of the Penal Code, Chapter 103.

"2nd charge

You, Chew Tak, are charged that you on or about the 9th day of April 1976 in the course of a Preliminary Inquiry held before the learned Magistrate of Court No. 14 Subordinate Courts, Havelock Road, Singapore, with a view to committal for trial to the High Court of one Tan Sit Yang on a charge of trafficking in a controlled drug which is an offence under section 3(a) of the Misuse of Drugs Act 1973 (No. 5 of 1973) and punishable under section 29 of the said Act, did intentionally state in evidence that:

'Whilst searching the taxi, I discovered a polythene bag underneath the driver's seat which is shown at photograph No. 2. The polythene bag contained five packets of brownish substance'

and that you on or about the 29th day of August 1976 at CID Robinson Road, in the course of a police inquiry into the same case before Insp. Sukhdev Singh, did intentionally state that:

'I searched the taxi for about 5 minutes but I was unable to find anything incriminating. PC 8286 then showed us a bundle he had found in the taxi. He opened the bundle and there were five plastic packets containing some brownish substance'

one of which statements you either knew or believed to be false, or did not believe to be true, and you have thereby committed an offence punishable under section 193 of the Penal Code, Chapter 103."

The appellant now appeals. The facts are relatively simple. As regards the first charge, the prosecution's case was that the appellant, in his signed statement which was admitted in evidence at the Preliminary Inquiry held on August 9, 1976, stated that Cheong, detective 6758, telephoned and requested him to meet Cheong at the junction of Lorong 6, Geylang Road and that he went there accompanied by P.C. 8286 and met Cheong and then all of them waited in ambush for taxi SH.2381 U. This taxi was stopped and a polythene bag containing five packets of a brownish substance (which was later ascertained to contain diamorphine) was found under the driver's seat. In his statement to Inspector Sukhdev Singh on August 29, 1976 he stated that it was at the request of P.C. 8286 that he went to Lorong 6, Geylang Road and there with P.C. 8286 and detective Cheong an ambush was laid for taxi SH.2381 U. This later statement also contained an admission that the information which led to the arrest of the taxi-driver was supplied by P.C. 8286 and not by detective Cheong. It also contained his explanation why he had not told the truth as to the informant being P.C. 8286 and not detective Cheong. The explanation was that P.C. 8286 had obtained information about the taxi-driver from the taxi-driver's mistress and because of this he had been persuaded by P.C. 8286 not to reveal in his statement to the investigating officer which was made three days after the taxi-driver's arrest that it was P.C. 8286 who had supplied him with the information about the taxi-driver.

The appellant, at his trial, did not dispute that in truth it was P.C. 8286 and not detective Cheong who informed him about the taxi-driver. The trial judge found that he "had given false evidence in a judicial proceeding" and in my opinion the only inference from that finding is that the trial judge had accepted the explanation contained in the appellant's statement to Inspector Sukhdev Singh and the appellant's evidence at the trial. In my judgment that was the only possible finding on the evidence before the trial judge.

However, on the statements available to the prosecution, the proper course would have been to charge the appellant with intentionally giving false evidence at the Preliminary Inquiry instead of a charge in the alternative as framed. Clearly, there was no difficulty in proving that the statement tendered in evidence at the Preliminary Inquiry as to the identity of the appellant's informant was not true. However, in my judgment the error in the form of the charge did not occasion a failure of justice. The evidence was clear and indeed the appellant in his evidence admitted that his statement on that point as tendered in evidence at the Preliminary Inquiry was not true. As regards the sentence different considerations apply. Having regard to the appellant's reason for giving this piece of false evidence, which was to prevent disclosure that the taxi-driver's mistress had informed on her lover, a sentence of nine months' imprisonment, in the circumstances of this case, is manifestly excessive. It appears to be entirely irrelevant to the successful prosecution of the taxi-driver for evidence to be given why an ambush was laid. Accordingly, I set aside the sentence of imprisonment and impose a fine of $1,000 in respect of the first charge.

As regards the second charge, it was incumbent on the trial judge to consider the totality of the contents of the three statements, including the circumstances under which they were made by the appellant following on the arrest of the taxi-driver and the discovery of the five packets of diamorphine in the taxi. It is to be observed, had this been done, that the statement to Inspector Sukhdev Singh made after the taxi-driver had been committed to trial in the High Court was a more detailed statement than the first statement made by the appellant to the investigating officer, Sgt. Makhan Singh, and the statement tendered in evidence at the Preliminary Inquiry.

In the context of the ambush and the search of the taxi, which was beyond doubt conducted by the appellant and P.C. 8286, and the explanation given by the appellant at his trial the finding of the district judge that the appellant made an untruthful statement as to who discovered the diamorphine in his statement tendered in evidence at the Preliminary Inquiry cannot be sustained. While the latter statement may not be the whole truth, having regard to all the circumstances, there was in my judgment a reasonable doubt that the appellant had intentionally given false evidence as defined in section 191 of the Penal Code when in his latter statement he stated that "whilst searching the taxi, I discovered a polythene bag under the driver's seat". Accordingly, the conviction on the second charge must be set aside.

Order accordingly.

Solicitors: *Nathan Isaac & Co.*

HAW PAR BROTHERS INTERNATIONAL LTD. v. OVERSEAS TEXTILES CO. LTD.

MOSCOW NARODNY BANK LTD. v. HAW PAR BROTHERS INTERNATIONAL LTD.

[O.C.J. (Choor Singh J.) March 7, 1978]

[Singapore — Originating Summons No. 194 & 225 of 1977]

Practice and Procedure — Priorities as between landlord distraining for rent and debenture holders of company — Floating charge crystallised — Distress Act (Cap 20), s. 10.

Landlord and Tenant — Distraint for rent — Debenture holder of company — Priority.

The applicants were debenture holders of a company and had applied to court for the appointment of a receiver and manager of the company. The company was the tenant of premises belonging to the respondents. There was machinery and other movable property on the premises. The respondents applied to distrain the movable property for arrears of rent. The applicant subsequently applied to have the writ of distress discharged or suspended and for the release of the property distrained. The question was who had priority, the debenture holders or the landlords.

Held: (1) as between an execution creditor and a debenture holder who possesses a floating charge the execution creditor takes subject to the equity of the debenture holder. There is no authority to support the view that the rights of a landlord are greater than those of an execution creditor *vis-a-vis* a debenture holder. A landlord is an unsecured creditor as any other unsecured creditor and he cannot have against a debenture holder any better rights than an unsecured execution creditor;

(2) on the facts of this case the debenture holders have a prior right to the property distrained to the respondents.

Cases referred to:-

(1) *Re Roundwood Colliery Co.* [1897] 1 Ch. 373, C.A.

(2) *In re New City Constitutional Club Company* (1887) 34 Ch. D. 646.

(3) *In re Harper's Cycle Fittings Co.* [1900] 2 Ch. 731.

(4) *Re Standard Manufacturing Co.* [1891] 1 Ch. 627, at p. 641.

(5) *Re Opera* [1891] 3 Ch. 260.

(6) *Davey & Company* v. *Williamson & Sons Ltd.* [1898] 2 Q.B. 94.

(7) *Evans* v. *Rival Granite Quarries* [1910] 2 K.B. 979 at p. 1000.

(8) *Duck* v. *Tower Galvanizing Company Limited* [1901] 2 K.B. 314.

ORIGINATING SUMMONS.

Goh Heng Leong for the receivers.

A.B. Netto for Haw Par Brothers International.

Harry Elias for Banque Nationale de Paris (Debenture-holder).

Wong Meng Meng for Moscow Narodny Bank Ltd. (Debenture-holder).

Choor Singh J.: The point in issue to be determined in these two Originating Summonses which have been ordered to be heard together is whether the applicants as debenture holders have a prior right to the property of Overseas Textiles Company Limited which has been distrained upon by the respondents for rent due to them as landlords of the said Company.

The facts briefly are these. Haw Par Brothers International Limited (hereinafter referred to as respondents) are the landlords of Overseas Textiles Company Limited (hereinafter referred to as the Company). The Company has machinery and other movable property on the premises, Haw Par Industrial Building No. 2, Chia Ping Road, Jurong, Singapore, of which it is a tenant of the respondents under a lease for five years.

On May 20, 1977 the respondents were informed that a receiver and manager had been appointed of the Company on May 17, 1977 by debenture holders.

On June 23, 1977 the respondents made an *ex parte* application to the court in Originating Summons 194 of 1977 for liberty to distrain the movable property found on the premises at Building No. 2, Chia Ping Road, Jurong, Singapore, for the sum of $79,200 being the amount of five months rent due to them from the Company. An order in terms of the application was made by the Assistant Registrar on the same day. On June 24, 1977 a writ of distress was issued by the court and executed by the Sheriff on June 25, 1977 against the movable property of the Company found on the leasehold premises.

On July 6, 1977 the Banque Nationale de Paris, a debenture holder of the Company applied to the court for the writ of distress to be discharged or suspended and for the release of all the property distrained. A similar application was made in Originating Summons 205 of 1977 by the Moscow Narodny Bank Limited, another debenture holder of the Company.

On July 11, 1977 the court ordered that the writ of distress be suspended and all the property distrained